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COMMITTEE ON THE RIGHTS OF THE CHILD

Eighteenth session

SUMMARY RECORD OF THE 464th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 27 May 1998, at 3 p.m.

Chairperson: Mrs. KARP

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Japan (continued) (CRC/C/41/Add.1; CRC/C/Q/JAP.1)

1. At the invitation of the Chairperson, the members of the delegation of Japan resumed their places at the Committee table.

2. The CHAIRPERSON said that it had been a privilege to hear the delegation of children from Japan and proposed that the delegation which would attend the consideration of the periodic report should consist not solely of women, but should also include children as full members. She invited brief questions and comments on general measures of implementation.

3. Mrs. SARDENBERG thanked the Japanese delegation for the frank, extensive information it had supplied and underlined the importance of dialogue and feedback. To that end, she urged the Japanese Government to circulate the relevant concluding observations and summary records in the education sector and suggested the appointment of children's rights commissioners (rather than civil liberties commissioners) with a broader mandate and more clearly defined institutional position. She likewise recommended the setting-up of a permanent mechanism to secure cooperation between the Government and non-governmental organizations (NGOs).

4. Given the important role data played in the formulation of policy, she hoped that, in the future, Japanese statistics would cover more topics (even when they were highly sensitive) and thereby encompass all the subject matter of the Convention. In addition, she drew attention to the need for a mechanism to coordinate a comprehensive governmental strategy on children, based on the Convention. In that connection, she stressed that it was vital to treat children as full citizens with rights and that the Japanese Government should display more political commitment towards implementing the Convention. Lastly, she requested clarification on the disparate figures relating to commissioners, quoted in the written answers and report.

5. Mr. KOLOSOV urged the Japanese Government to print a very large number of copies of the Convention and leaflets on children's rights, together with the reports to and concluding observations of the Committee.

6. Mrs. PALME asked if the civil liberties commissioners had actively participated in the formulation of government policy on national minorities and permanent foreign residents. Had the Convention been translated into those people's languages?

7. Mr. FULCI requested more information about the Convention's status in the Japanese legal system. Would draft legislation on minors be examined to ascertain its conformity with the Convention? In the event of a conflict of laws, did the Convention take precedence over municipal law? Could the Convention be invoked in Japanese courts.

8. The CHAIRPERSON suggested that in the light of the commitments it had accepted in the wake of the World Conference on Human Rights in Vienna, the

Japanese Government should reconsider its reservation to article 37, paragraph (c), of the Convention. Since children clearly knew nothing about the content of the Convention, was the Government contemplating a field survey to discover more effective means of disseminating information material?

9. Irrespective of the status of the Convention in domestic law, a statute expressly incorporating the Convention as a guiding principle in all legislation pertaining to children was crucial. She recommended that the Government should pass a comprehensive "Children's Law" to harmonize all national laws concerning children with the Convention; such a move would be of assistance to judges and educationalists.

10. She detected acknowledgment on the part of the Government that, on its own, it was unable to implement the Convention properly. For that reason, NGOs should be regarded as partners in a purposeful dialogue aimed at the realization of children's rights. Merely passing on information about the contents of the Convention to certain profession groups did not amount to real training. The Convention should be embodied in their codes of ethics and they should be issued with practical guidelines on the implementation of the Convention in their everyday work. The Government might wish to give some thought to that matter.

11. As to the appointment of an ombudsman or human rights commissioner, although volunteers would be cheaper and might ensure community involvement, a national, child-focused institution was needed to implement and evaluate the working of the Convention and deal with complaints, in order to bring about a genuine improvement in the status of children. Lastly, she asked whether the New Domestic Action Plan towards the Year 2000 specified responsibilities and set precise goals.

12. Mr. AKAO (Japan) said that he wished to clarify the relationship between the Convention and domestic law. International agreements did not automatically apply in Japan. Before international instruments were ratified, municipal law was examined and any provisions inconsistent with those instruments were removed. Ministries submitted their amended laws to the same session of Parliament as that at which accession to the instrument would be approved. International conventions had been invoked in Japanese courts in some cases, but they were not self-executing in Japan, since a minute appraisal of their contents must first be made.

13. Mr. FULCI raised the possibility of a future law conflicting with the Convention. Which would prevail if that happened?

14. Mr. KAITANI (Japan) explained that in his country international instruments took precedence over domestic law. Courts could therefore rule on complaints which relied on those conventions. There had been one case in 1995 when a high court had found that article 13, paragraph 2, of the Convention applied not only to the laws adopted by the Diet, but also to orders issued by local authorities.

15. Mr. KOLOSOV inquired whether an illegitimate child who wished to claim more than the half entitlement to his parents' estate which fell to him under Japanese law, could refer to article 1 of the Convention and apply to the courts for a share equal to that of his legitimate siblings.

16. Mr. KAITANI (Japan) said that since no claim of that kind had yet been submitted to the courts and it would be up to the courts to rule on the matter he, as a mere administrator, was unable to reply.

17. The CHAIRPERSON invited questions on general principles and the rights of the child.

18. Mrs. PALME pointed out that a decision on the question of illegitimate children's inheritance rights had been handed down by the Supreme Court on 5 July 1995. Emphasizing that children born out of wedlock should not be partly disinherited, she maintained that it was also wrong to call them illegitimate, since it was the parents, and not the children, who had transgressed.

19. She wished to know why there was a difference in the ages at which girls and boys could marry and if the Japanese Government was considering ratification of ILO Convention No. 138. Had the Japanese Government looked at ways of reducing the stress which children suffered in a highly competitive society and education system and which might lead to bullying, suicide, truancy and school phobia? One solution might have been adumbrated in the comments made by the young people regarding an opportunity to form various types of school club and interact meaningfully with adults, be they school governors or parents. And incidentally, how much time and care did Japanese fathers devote to their children?

20. Mr. KOLOSOV pointed out that the information given in reply to his question seemed to contradict the answer to Mr. Fulci's question. Referring to the definition of the child, he said that the idea that a person did not become an adult until he was 20 was definitely contrary to the Convention. Young people in the 18 to 20 age group might find themselves in a legal vacuum and be unable to defend their rights and interests because they could neither rely on the protection afforded by the Convention nor be heard in a Japanese court as adults.

21. Concerning the definition of the child, there seemed to be a feeling in Japanese academic circles that the concept of the child embraced in the Convention, namely a person aged up to and including 18, had not been reflected adequately in the Japanese translation. He would like to hear the delegation's observations.

22. With regard to discrimination against minorities, he would like to know what legal recourse against discrimination was available to the Korean and other minority populations. Could the delegation give examples of successful cases? Also, to what extent did Korean communities have access to publications and television and radio programmes in their own language?

23. Mr. FULCI said that article 2 of the Convention clearly stipulated that States parties should take all appropriate measures to protect children

against all forms of discrimination. Although the report stated that that provision was reflected in article 14 of the Japanese Constitution, a number of NGOs had reported cases of discrimination to the Committee. They concerned not only the inheritance rights of children born out of wedlock, but also the fact that their birth status was made clear in their identification papers. Many countries had long abandoned that practice, precisely because it exposed children to discrimination. Through the Committee, he appealed to the Japanese authorities to do likewise.

24. Secondly, Japan's civil law provided that the inheritance of a child born out of wedlock should be half that of a "legitimate" child. Moreover, the Japanese Government held that to be compatible with article 2 of the Convention. Nevertheless, in 1993 and 1994 the High Court in Tokyo had ruled that the distinction was incompatible with article 14 of the Constitution, and therefore with article 2 of the Convention. However, in 1995 the Supreme Court had reversed those verdicts, thus strengthening the assumption under civil law that the inheritance distinction was a legitimate means of protecting family life. He asked the delegation whether there was any hope that the situation might change in the near future.

25. Mr. PALME asked what was being done to ensure that Korean schoolchildren entered Japanese universities on equal terms with their Japanese-speaking peers. At the moment, they required fluent Korean and Japanese, and not even foreign students were normally required to take an additional language examination. The present situation clearly contradicted article 2 of the Convention.

26. Mrs. OUEDRAOGO said that after considering Japan's third periodic report, the Human Rights Committee had recommended changes to its legislation concerning children born out of wedlock, the registration of their birth and their inheritance rights. She would like to know what steps had been taken to implement those regulations, and also the others which the same Committee had made with a view to redressing discrimination against Korean and Ainu children. In the light of the statement on non-discrimination in paragraph 48 of the report, what was being done to assure those children's rights in the areas of health, education and general development?

27. What were the reasons for the markedly lower school attendance rates among Korean and Ainu children? She asked the delegation to describe the situation of children of illegal immigrants, especially with regard to their birth, registration, social security rights, nationality and education. And finally, she would like to know what steps were being taken to address the problem of discrimination and prejudice against disabled children, especially in education and health, and whether the Government was making efforts to change a highly conservative society's attitudes towards the disabled.

28. Mr. RABAH said there was also evidence that children from minorities and of foreign nationality suffered discrimination of an ethnic and religious nature in Japan. He would like to know whether any legal proceedings had been brought on their behalf. Also, what were the ages of criminal responsibility and eligibility for military service?

29. Mrs. OUEDRAOGO, referring to the definition of the child, said that the difference in the ages at which men and women could marry - 18 and 16 respectively - constituted discrimination. Also, while the employment of children under 15 was prohibited, she had noted that in exceptional cases children over 12 could be employed. What was done in such cases to provide for the children's safety and physical and intellectual development?

30. Mrs. SARDENBERG said that Japan had only ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1996, after it had ratified the Convention on the Rights of the Child. Thus, there had been little time to harmonize the relevant legislation. The report shed light on many breaches of the principle of non-discrimination established in article 2 of the latter Convention, many of whose provisions had not yet been incorporated in Japan's legislation.

31. In that connection, she would like to know what measures were being taken to reflect fully the provisions of article 2 of the Convention in Japan's legislation, particularly with regard to disabled children, equal status and opportunities for girls at school and in the family, and children from the Huro areas and/or from an economically disadvantaged background.

32. Mr. KOLOSOV said he had learned that Korean children were adopting Japanese names in order to enter university and to improve their social standing. If that was true, was it a legally recognized practice?

33. The CHAIRPERSON, elaborating on Mr. Kolosov's question about the inheritance rights of children born out of wedlock, said it was her understanding that draft legislation under preparation concerned with the equalization of their inheritance shares, and making it possible to fight for their rights in court, had been shelved. What was being done to expedite that legislation? A summary of 1995 court decisions on inheritance to which she had had access revealed that the courts at that time had referred only to the Constitution in taking their decisions, and not to the Convention, which Japan had ratified some years before.

34. The Committee recognized that Japan limited the inheritance rights of children born out of wedlock as a protective measure aimed at avoiding the break-up of families. However, it could not accept that there was any substantial relationship between the purpose of that legislation - the preservation of families - and its effect, which was discriminatory.

35. Although article 2 of the Convention was not clear on the matter, a holistic interpretation of the Convention that included not only discrimination but also the best interests of the child could not but reach the conclusion that member States should adopt a dynamic interpretation of the Convention with regard to the inheritance rights of children born out of wedlock. She would like to know what research had been done in Japan to substantiate the assumption that discrimination against the child on grounds for which he could not be accountable actually prevented the break-up of families.

36. Noting that Japan's internal legislation made no express provision for the best interests of the child as a primary consideration, even in the parts

of the civil law dealing with the responsibilities of the parents, she said that the report seemed to make no distinction between care and love of children and a child's best interests. While care was addressed by welfare legislation, Japan's legislation did not seem to recognize the child as a person independent of its parents, whose interests amounted to more than a mere compromise based on all other interests.

37. She would like to know the extent to which the child's best interests, especially the right to exist as an independent person, had informed the debate in Japan on the matters the Committee had raised, notably regarding the competitive entrance exam to upper secondary school, school phobia, the amendment of the welfare laws, allowances for widowed mothers and single mothers, and training for those who worked with children whose rights had been infringed.

38. Furthermore, in a holistic view of the Convention, the best interests of the child were inseparable from listening to the views of the child. How was that reflected in the courts, in institutions and in school disciplinary procedures? And what measures were being taken to enhance dialogue between parents and children?

The meeting was suspended at 4.45 p.m. and resumed at 5 p.m.

39. Mr. KAITANI (Japan), replying to the questions the Committee had raised, said that the purpose and content of ILO Convention No. 138 were reflected widely in Japanese laws and regulations. The Diet was currently examining an amendment to the Labour Standards Law that was intended to end the discrepancies between Japanese legislation and the ILO Convention in respect of the age at which children could undertake part-time and full-time work. Japan was preparing to ratify that Convention at the earliest opportunity.

40. In line with that Convention, the Labour Standards Law provided that children between the ages of 12 and 15 were entitled to undertake light work that was not injurious to their health, examples being small film and stage parts. Teachers had the right to intervene if they considered that such work was affecting the child's performance at school.

41. In order to respect the position both of children and of legal marriages for inheritance purposes, the Civil Code took account of the civil status of children born in or out of wedlock. In an attempt to harmonize the situation between the two categories of children, the Supreme Court had ruled in 1995 that the latter were entitled to inherit one-half the amount of inheritance due to the former. The differentiation was not a discriminatory measure and was not unique to his country. While the Convention on the Rights of the Child declared that unfair discrimination should be eliminated, it made no specific reference to inheritance. In 1993, the Tokyo High Court had ruled that such discrimination contravened article 14 of the Japanese Constitution, a ruling subsequently overturned by the Supreme Court. In 1996, therefore, the Legal Systems Council had recommended to the Ministry of Justice that the Civil Code should be amended to abolish the disparity. However, a poll conducted by the Prime Minister's Office in June 1996 had resulted in majority opposition to any such revision. Public opinion was still being monitored, in

the hope that the situation would change and facilitate referral of an amendment to the Diet.

42. The marriageable age was 18 for boys and 16 for girls. The purpose of marriage being to form a new family as a unit in society, children not of mature age were prohibited by law to marry. The difference in marriageable age was not unique to Japan and was explained by the two sexes' differences in mental and physical maturity.

43. The question concerning discrimination against Korean children would be answered in greater detail by his colleague. Regrettably, a number of specific cases of discrimination against foreigners had been brought to the attention of the Ministry of Justice in 1997, but the civil liberties organs of the Ministry of Justice were promoting activities to eradicate discrimination against Koreans and foreigners. A series of nationwide awareness-raising activities had been conducted in connection with Human Rights Day from 1991 to 1993. The civil liberties organs knew of no examples of discrimination against Ainu children but were, nonetheless, engaged in vigorous action to eliminate any such discrimination, and Civil Liberties Commissioners' Day had been declared to heighten awareness of the problem, especially in and around Hokkaido.

44. Replying to a question by the Chairperson, he said that children under 15 were not normally entitled to express their opinions in the Family Courts. If that need arose, in the interest of the child's welfare, his capacity for self-expression was assessed and the appropriate decision taken to protect his rights.

45. Mr. HAYASHI (Japan), replying to questions concerning discrimination in education, especially against Korean children, said that various types of special education existed in Japan. All children were entitled to education adapted to their age and maturity, as determined by trained teachers; that education would form part of the curriculum. Completion of one curriculum was a prerequisite for promotion to a higher level. Special education was provided in international schools, known as "special schools", which could set their own rules on the basis of their specific culture and were not obliged to adopt Japanese curricula. However, graduates of Korean schools, not having achieved the same results as their Japanese counterparts, could not enter Japanese universities. If they wished to do so, however, they were free to attend Japanese schools and receive extra-curricular native-language tuition.

46. Special education for children with disabilities depended on the individual child and the severity of the disability. While special schools for the disabled did exist, disabled children were not forced to enrol in them. Wherever feasible, efforts were made to ensure that they took their legitimate place in Japanese society and they were encouraged to maintain social relations with others.

47. The enrolment rate among Ainu children was lower but increasing although, for a variety of reasons, the level was still unsatisfactory. The problem was being addressed by the Ministry of Education with the offer of grants for Ainu children to attend special schools.

48. Pointing out that stress affected adults as well as children, he agreed with the Chairperson that it could be caused by academic pressure. A 1992-1994 national survey had shown that children suffered extreme stress owing, inter alia, to protracted study time and a highly competitive education system. Given the stress occasioned by the selection process for promotion to senior high schools, the Diet was currently considering the introduction of a less complex and stressful entrance procedure, involving comprehensive evaluation as opposed to selection based on a single examination. The Central Education Council had also reviewed the Japanese education system and had made recommendations, including the introduction of a five-day-week. Furthermore, there was a system of subsidies for children from poor families.

49. The 1997 enrolment figures for senior high school showed a slight predominance of girls, with 97.7 per cent of the total female population in that age group as against 95.5 per cent for boys; the figures for university education were 43 per cent for men and 26 per cent for women. In overall tertiary education, however, females predominated (45.8 per cent for men and 48.8 per cent for women), the reason being that women-only schools abounded and many women attended junior colleges instead of universities. The Ministry of Education considered that the situation reflected traditional attitudes, with boys showing more interest in science and engineering and entering technical schools, and girls showing greater interest in other subjects. The Ministry had issued express instructions that there was to be no discrimination in the selection process.

50. Mr. YOSHIDA (Japan) said that children of illegal aliens were not denied access to Japanese schools. The Ministry stipulated that disciplinary measures in schools should be imposed solely for educational purposes, and children's opinions were sought.

51. Freedom of association was a natural right of the child, on condition that the school, being a place of education, could not be used for meetings whose purpose conflicted with that of education. Moreover, since children lacked the discernment to form sound political judgments, political meetings were not allowed in schools.

52. Mr. GOTO (Japan), replying to a question on discrimination against disabled persons, said that while there was room for improvement in public attitudes to the disabled, under the Fundamental Law for People with Disabilities a seven-year normalization programme had been launched in 1996, and the Government, despite severe financial constraints, had allocated resources earmarked for increased opportunities for disabled persons. A special budget enabled disabled children to receive the same degree of care as other children and encouraged them through the existing legal framework, to live in their own surroundings and realize their full potential.

53. Japan endeavoured to meet the basic needs of poor families by subsidizing them through public assistance allowances for medical and educational expenses.

54. As the Chairperson had pointed out, children born out of wedlock had not initially been eligible for allowances if they were recognized by the father. However, since April 1998, that discrepancy had been abolished and all

children of single mothers were currently entitled to receive such allowances, irrespective of paternal recognition. Agreeing that financial support probably did not suffice to ensure the best interests of the child, he pointed out that the mechanism whereby single mothers enjoyed low-interest housing and education loans also helped them to become more independent and self-sufficient in providing for their children.

55. Mr. HAYASHI (Japan) said that children's ability to express their views had been specifically provided for with the April 1998 amendment of the Child Welfare Law, which empowered the Child Guidance Centre to convene special hearings to enable the child to voice his opinion concerning institutionalization. Regarding children's best interests when there was conflict between their opinion and that of their parents, treatment of the child should be based on the opinion of the Advisory Boards, another result of the amendment of the Child Welfare Law. Replying to the question concerning the treatment of children in welfare institutions, a recently-established system provided for regular inspections to ascertain that children's opinions were effectively respected. Children suffering from school phobia were not forced to enter correctional institutions.

56. Mr. YOSHIDA (Japan) acknowledged that the Civil Code differentiated between legitimate and illegitimate births and required a precise description of a child's legal and civil status, which must be reflected in the Family Register. There being differences in the rearing of children born in or out of wedlock, entries of children of legitimate marriages stated whether they were a "first son", "first daughter" and so on, whereas children born out of wedlock were merely designated by their sex.

57. Replying to Mr. Kolosov, he explained that Korean residents were not obliged to enter themselves under Japanese names in the Family Register. Nonetheless, they usually did so, fearing that Korean names would reduce their ability to secure employment or homes. Such a situation indeed breached the principle of non-discrimination enunciated in the Convention and Japanese law, but the Civil Liberties Commission was continuing to instruct its subsidiary organs to address the issue.

58. The CHAIRPERSON thanked the delegation for its detailed and informative replies, which had no doubt raised further questions in the minds of members.

The meeting rose at 6 p.m.